

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LANE MCDONOUGH,

Plaintiff,

-against-

THE NEW YORK CITY DEPARTMENT OF  
EDUCATION, PAUL DIDIO

Defendant.  
----- x

**NOTICE OF MOTION TO  
DISMISS THE AMENDED  
COMPLAINT**

16 Civ. 4272 (LTS) (JLC)

**PLEASE TAKE NOTICE** that upon the annexed Declaration of Evan M. Piercey, dated March 30, 2017, and the exhibits annexed thereto, the accompanying Memorandum of Law in Support of Defendants’ Motion to Dismiss the Amended Complaint, dated March 30, 2017, and upon all the papers and proceedings previously had herein, Defendants the New York City Department of Education (“DOE”) and Principal Paul DiDio (collectively, “Defendants”) will move this Court at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York, 10007, before the Honorable Laura Taylor Swain, United States District Court Judge, at a time and date to be designated by the Court, for a judgment, pursuant to section 3813 of the New York State Education Law and Rule 12(b) of the Federal Rules of Civil Procedure, dismissing the Amended Complaint against the Defendants on the grounds that: (1) the Amended Complaint is barred by the doctrines of collateral estoppel and res judicata; (2) the Amended Complaint is procedurally deficient as Plaintiff has failed to file and serve a timely notice of claim, a condition precedent to bringing suit on his New York State and New York City law claims, and (3) the Amended Complaint otherwise fails to state a claim upon which relief can be granted.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Local Civil Rule 6.1, opposing affidavits and answering memoranda shall be served within fourteen (14) days after service of the moving papers, and reply affidavits and memoranda of law shall be served within seven (7) days after service of the answering papers.

**CERTIFICATION:** In accordance with Rule 2(b)(i)(A) of The Honorable Laura Taylor Swain's Individual Practices, the undersigned sent Plaintiff's counsel a letter on February 7, 2017 outlining Defendants' positions in their anticipated motion to dismiss the Amended Complaint. On March 23, 2017, Plaintiff's counsel sent a letter in response, outlining Plaintiff's position. Thereafter, on March 27, 2017, the undersigned and Plaintiff's counsel spoke on the telephone to discuss their respective positions regarding Defendants' motion to dismiss the Amended Complaint.

Dated: New York, New York  
March 30, 2017

**ZACHARY W. CARTER**  
Corporation Counsel of the  
City of New York  
Attorney for Defendants  
100 Church Street, Room 2-173  
New York, New York 10007-2608  
(212) 356-2428  
[epiercey@law.nyc.gov](mailto:epiercey@law.nyc.gov)

By:                     /s/                      
Evan M. Piercey  
Assistant Corporation Counsel

TO: **Via ECF**  
Maria Chickedantz  
Mirer Mazzocchi Schalet Julien & Chickedantz, PLLC  
150 Broadway, Twelfth Floor  
New York, New York, 10038

16 Civ. 4272 (LTS) (JLC)
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
LANE MCDONOUGH,  <div style="text-align: right;">Plaintiff,</div>  <div style="text-align: center;">-against-</div>  THE DEPARTMENT OF THE CITY SCHOOL DISTRICT OF NEW YORK, PAUL DIDIO  <div style="text-align: right;">Defendants.</div>
<b>NOTICE OF MOTION TO DISMISS THE AMENDED COMPLAINT</b>
<p style="text-align: center;"><b>ZACHARY W. CARTER</b>  <i>Corporation Counsel of the City of New York</i>  Attorney for Defendants  100 Church Street, Room 2-173  New York, New York 10007</p> <p style="text-align: center;">Of Counsel: Evan M. Piercey  Telephone: (212) 356-2428  Matter No.: 2016-038275</p>
<i>Due and timely service is hereby admitted.</i>  <i>Dated: New York, New York.....2017</i>  <i>Signed: .....</i>  <i>Attorney for.....</i>